

Navigating Wyoming's Mental Health Emergency Detention Process: *Information for you and your family*



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Emergency Detention Processes:
Information for you and your family

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Visit us on the web
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This document is available in alternative format.

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This document is intended as a summary for client and family use. It is not intended to replace legal counsel.

For updates to this document, please consult the Mental Health and Substance Abuse Services Division's website at <http://health.wyo.gov/mhsa>.

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What is an emergency detention?

When a person is thought to be a danger to self or others or unable to satisfy basic needs as a result of a mental illness, the person may be involuntarily detained through a legal process. Emergency detention and involuntary hospitalization are described in Wyoming State Statute 25-10-101 through 127. The statutes are available in the reference section of many Wyoming public libraries or on the internet at <http://legisweb.state.wy.us>.

This document summarizes the processes related to emergency detention as defined and described in Wyoming State Statute 25-10-109.

Please see the last part of this publication for more information about involuntary hospitalization.

Who makes the decision to detain a person under this law?

An emergency detention is the legal process for temporary detainment of a person who is dangerous to self or others as a result of mental illness. A law enforcement officer or an examiner must make the initial decision to detain.

An examiner may be a licensed professional psychiatrist, physician, advanced practitioner nurse with a psychiatric and mental health specialty, psychologist, professional counselor, addictions therapist, clinical social worker, or a marriage or family therapist.

What are the criteria for an Emergency Detention?

The person may be detained through this legal process for up to 72 hours if he or she is believed to be “dangerous to himself or others” or unable to satisfy basic needs as a result of mental illness. One or more of the following must be evidenced to meet the definition:

Harm to self: There must be evidence of or a substantial probability of physical harm to the person and evidence of recent threats of or attempts at suicide or serious bodily harm;

Harm to others: Or there must be evidence of or a substantial probability of physical harm to others as shown through a recent overt homicidal act, attempt or threat or other violent act, attempt or threat which places others in reasonable fear of serious physical harm to them;

Inability to meet basic need: Or the person must demonstrate behavior by recent acts or lack of action that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, essential medical care, shelter or safety. In this case, there must exist a high probability that death, serious physical injury, serious physical debilitation, destabilization because of not taking prescribed psychotropic medications, or serious physical disease will occur right away unless the individual receives prompt and adequate treatment for this mental illness. If the person can satisfy those needs with the supervision and assistance of others who are willing and available, a detention may not be justified.

First 24 Hours

What happens during the first 24 hours of detention?

A law enforcement officer or an examiner may detain a person who is dangerous to himself or others as a result of mental illness. A statement of the facts of the emergency detention shall be written by the officer or examiner and a copy of that document will be given to the detained person and any subsequent examiner.

An examiner must be contacted immediately. Within 24 hours, there must be an examination by a licensed health or mental health professional examiner. If the person is not found to be mentally ill or not a danger to self or others, the person must be released.

You have the right to an attorney.

The detained person has the right to an attorney. The court must appoint an attorney if the person does not have one.

Why do the police “read your rights” when detained?

When detained, the person will most likely be “read their rights.” This does not mean that the person is under arrest.

Every person has civil rights which continue during an emergency detention. The police are required to remind the person of these civil protections. In addition to other civil rights, the statute specifies:

“At the time of emergency detention the person shall be informed orally and in writing of his right to contact his family and an attorney, of his right to appointed counsel if he is indigent, of his right to remain silent and that his statements may be used as a basis for involuntary hospitalization.”

Where can Emergency Detention occur?

Emergency detention may occur in a hospital or other suitable facility which is appropriate under the circumstances. This may include the person's home or another location in the community.

The law specifies that person shall not be detained in a jail or criminal detention center unless there are no other reasonable alternatives.

How will family members or friends know about the emergency detention?

The police officer shall immediately contact the person responsible for the care and custody of the detained person, if known, and inform that person of the time and place of the emergency detention. The detained person is also to be informed orally and in writing of the right to contact family members. The hospital or other facility must keep the detained person's personal health information private and secure. For the hospital or police officer to inform anyone else, the detained person, or his or her personal representative, must first agree to the release of the information.

What else must be told to the person who is detained?

At the time of emergency detention, the officer or examiner must inform the person who is detained that he or she has the right to contact his/her family, the right to an attorney, the right to appointed counsel if indigent, the right to remain silent, and that any statement may be used as a basis for involuntary hospitalization. This information must be given orally and in writing.

The next 48 hours

Preliminary Hearing

When will a preliminary hearing take place?

A preliminary hearing must occur within 72 hours of the emergency detention (excluding Saturdays, Sundays, and legal holidays.)

- The person and his/her attorney must be given notice of the preliminary hearing.
- The hearing cannot be delayed unless requested by the person, parent/guardian, or his/her attorney.

What happens at the Preliminary Hearing?

- The court advises the person (and parent/guardian) or the person's attorney of the emergency detention statement written by the examiner.
- The judge will decide if the person should be released or if there should be continued detention.
- The court must decide based on a preponderance of evidence. This means that the court decides based on what it believes to be the most likely case.

If the judge finds the person to be mentally ill, the judge may order a **continued detention** for up to ten (10) additional days. The patient or his attorney may request a longer period of time. If the judge does not order the continued detention, the person must be released.

If the court finds the person to be mentally ill, the court shall make findings as to the person's competence (or ability) to make informed choices regarding treatment and the person's need for prescribed psychotropic medication.

If the court finds the person incompetent to make an informed decision, the court may order the administration of prescribed psychotropic medication for the period of the emergency detention to help stabilize the person's mental health.

What other options does the court have?

The court must release the person if found to not be mentally ill or not of danger to self or others.

The court may order a release from emergency detention if the person agrees to voluntary treatment.

The court may also proceed with involuntary hospitalization proceedings as specified in Wyoming State Statute.

What happens if the emergency detention is still needed after 10 days?

The County Attorney may request a hearing for continued hospitalization or other treatment. Should this occur, an attorney will be appointed for the person if one has not already been retained. The law contains other protections for the person who is detained. Please consult the appointed attorney and the pertinent statute for more information.

Notes:

Other Care Issues

What type of treatment will be provided?

- Treatment may be provided if the person knowingly and willingly consents. This may include psychiatric care, medical treatment, medication, therapy, or other prescribed care.
- A report of any treatment provided will be filed with the court if there is an involuntary hospitalization hearing.
- A parent or guardian may consent to treatment if the person is a minor or incompetent.
- The county is responsible for providing treatment during the first 72 hours (along with weekend and holidays that fall within that time.)
- If the person is detained for more than 72 hours, the Wyoming Department of Health is responsible for providing psychiatric treatment, directly or through a contract provider.

What type of treatment does not require the patient's consent?

Treatment may be provided by the physician or examiner in good faith.

Treatment may be given without consent of the detained person (or parent/guardian) when limited to diagnosis or evaluation or when necessary to prevent immediate and serious physical harm.

If the court finds the person incompetent to make an informed decision, the court may order the administration of prescribed psychotropic medication for the period of the emergency detention to help stabilize the person's mental health.

What about medical care while detained?

Medical care related to the emergency detention, including those related to suicide attempts or to serious bodily harm, will be provided. These are covered under the costs of the emergency detention.

The patient, parent or guardian, or the patient's insurance or healthcare payment provider (such as Medicare) may be responsible for other medical treatment costs. You may wish to ask the hospital or physician for clarification about these costs.

Except as specified in statute, treatment may be provided if the person (or parent/guardian) voluntarily and knowingly consents to treatment.

Prior to treatment, the person shall be fully advised of the scope of treatment.

Notes:

Who pays for the emergency detention in a hospital?

- The hospital must first try to collect the costs from insurance, patients and benefit programs. The patient may complete an affidavit provided by the hospital to show that they do not have insurance or benefits to cover these costs¹.
- Following this step, the County is responsible for the costs of the first 72 hours of detention plus any weekend or holiday that falls within this 72 hour period. The County Attorney should be able to arrange this payment.
- The Wyoming Department of Health is responsible for emergency detention costs when the detention lasts more than 72 hours.

Who pays for transporting the person to the hospital?

- The statute specifies that the County is responsible for transportation costs during the first 72 hours.

¹ Wyo. Stat. §25-10-112(d): The hospital or other treatment provider shall attempt to recover all costs of treatment from public and private health insurance, from patients, and from government benefit programs prior to seeking payment from the county or the department. The hospital or other treatment provider shall have discharged its obligation to recover costs under this subsection if it:

(i) Has obtained or made reasonable effort to obtain from the patient or the patient's legally designated representative an affidavit showing the patient's financial condition which would support certification of the facts under paragraph (ii) of this subsection; and

(ii) Certifies to the county or the department that the patient has no public or private health insurance and that there are no other government benefit programs from which it can recover the costs of treatment.

A sample financial affidavit may be found at <http://health.wyo.gov/mhsa>.

Who is responsible for the court costs and attorney costs?

The statute specifies that the County is to pay the costs of the emergency detention and involuntary hospital court proceedings including the costs of the attorney and the examiner. If the person is not a Wyoming resident, the Department of Health is to pay those costs.

What is Involuntary Hospitalization?

The court may proceed with processes to decide if involuntary hospitalization or other types of care are warranted. This process includes certain rights for the client and also requires the court to make the decision through a process. This process is covered in Wyo. Stat. §25-10-110. Please consult with your attorney for more information about this portion of the law.

If I am concerned about a family member, who should I call?

Please call 911 if you believe there is an emergency. You may also call your Community Mental Health Center or the local Department of Family Services. Either of these agencies may arrange for an adult wellness check to see if your loved one is safe.

Notes:

Who do I contact for more information?

Locally, please check the yellow pages under “Mental Health Center” for your local Community Mental Health Center (CMHC). Or you can find the list of CMHC’s at <http://health.wyo.gov/mhsa>.

Statewide there are two resources for more information:

Mental Health & Substance Abuse Services Division
Wyoming Department of Health
1-800-535-4006
(307) 777-6494

Substance Abuse & Mental Health Ombudsman
Phone: (307) 632-5519
Toll Free: (888) 857-1942